

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONCORDIO TORING, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal of Concordio Toring seeks for the reversal of the June 15, 2005 Decision[1] of the Regional Trial Court, Branch 55, Mandaue City convicting him of Estafa in Criminal Case No. DU-6013.

Antecedents

On August 4, 1997, Concordio Toring (Toring) was charged before the RTC of Estafa. The Information[2] that was filed against him reads as follows:

“That on or about the 3[rd] day of December 1992, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused after having been entrusted with Metrobank check no. 12211756 in the amount of P 200,000.00 belonging to Robert J. Dino for said accused to pay to the BIR the Capital Gains Tax, documentary stamps and other related expenses in connection with the transfer of ownership to private offended party's name of various properties, but far from complying with his obligation, accused failed and refused to return the same despite repeated demands and with grave abuse of trust and confidence and with fraudulent intent, did then and there willfully, unlawfully and feloniously misappropriate, misapply, embezzle and convert said amount to his own personal use, benefit and gains to the damage and prejudice of herein offended party in the amount aforestated.

CONTRARY TO LAW.”

On August 17, 2000, Concordio Toring was arraigned and entered the plea of “Not Guilty”[3]. Earlier on August 11, 1997, he posted cash bail bond before RTC, Lapu-Lapu City for his temporary liberty. Trial on the merits then ensued.

Version of the Prosecution[4]

The private complainant Mr. Robert Dino testified that he had come to know the accused sometime in December 1992 when the latter acted as the agent or broker for the sale of real property. Mr. Dino further testified that he gave to the accused P 300,000.00 which amount was to be used xxx to pay the other related expenses arising out of the sale of real properties. To evidence the receipt by the accused of the said amount, Mr. Dino presented a Memorandum Receipt (Exhibit “A”) duly signed by the accused who undertook to transfer the ownership of the lots subject of the sale in the name of Mr. Robert Dino. However, the accused failed to comply with his undertaking to transfer the ownership of the lots in the name of Mr. Dino. xxx he likewise failed to return the amount of P 300,000.00 which was entrusted to him by Mr. Dino for the payment of the capital gains tax, documentary stamp tax and such other related expenses despite demands xxx.

Version of the Defense[5]

In his defense, the accused testified that he acted as the real estate broker for the Spouses Carlo and Marian Caparas who allegedly owned parcels of land which were subsequently sold to Mr. Dino. Accused further

testified that Mr. Dino paid in check Mr. Caparas the consideration for the sale of the lots. xxx Mr. Dino handed over to Mr. Caparas a check for the amount of P 300,000.00. All this time, accused was present. xxx after receiving the check for P 300,000.00 from Mr. Dino, Mr. Caparas turned over the same to him. Thereafter, accused allegedly gave the amount to a certain Mr. Riel Inoc to whom the accused delegated the task of paying for the capital gains tax xxx other similar expenses. However, Mr. Inoc failed to pay the amount to the BIR xxx on account of which the accused filed a case for estafa against Mr. Inoc, who incidentally, took the witness stand and confirmed the testimony of the accused.

Accused also made mention of Civil Case No. MAN- 1786 which was filed by Mr. Dino against him and the Spouses Caparas. Mr. Dino and the Spouses Caparas amicably settled the case between themselves to the exclusion of the accused. The Spouses Caparas paid Mr. Dino the amount of P 3,500,000.00. Accused contended that the settlement made by the Spouses Caparas already included the amount of P 300,000.00 which accused owed Mr. Dino.

On June 15, 2005 the RTC rendered the assailed Decision, the decretal portion of which reads:

“WHEREFORE, premises considered, the Court finds the accused Concordio Toring, GUILTY BEYOND REASONABLE DOUBT, as principal for the crime of ESTAFA. There being no modifying circumstance to consider and applying the provisions of the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment of prison mayor or 12 years and 1 day as minimum to reclusion temporal medium or 17 year (sic) and 4 months as maximum. Accused is likewise ordered to indemnify private complainant Mr. Robert Dino in the amount of P 300,000.00. costs against the accused.

SO ORDERED.”

Aggrieved, the accused immediately filed his Notice of Appeal[6] on August 1, 2005.

Assignment of Error

Concordio Toring (accused-appellant) interposes a lone assignment of error, that is:

I. The trial court erred in ruling that the element of damage has been proven.

The accused-appellant expounds in his Brief that by private complainant's own admission in Civil Case No. MAN- 1786, the amount of P 300,000.00 was part of the consideration of the transaction between private complainant and Spouses Caparas. The private complainant stated that the capital gains tax, documentary stamps and other expenses in the BIR are to be taken from the consideration of P 2,580,000.00 given to the Spouses Caparas. The logical conclusion therefore is that the money given to the accused-appellant is the money of the Spouses Caparas and not of private complainant. Therefore, the latter was not defrauded by the accused-appellant because the money that he received belonged to the spouses.

Next, the accused-appellant theorizes that the compromise agreement between the private complainant and the Spouses Caparas extinguished his obligation to return the P 300,000.00. He benefited from it even if he was not a party thereto. Number 1 of the Compromise Agreement approved on December 13, 1996 provides that the defendants (Spouses Caparas) acknowledged receipt of P 1,350,000.00 in consideration of the two Deeds of Absolute Sale of two lots located in Calawisan/Babag, Lapu-Lapu City and one lot located in Sta. Rosa, Lapu-Lapu City. Defendants also acknowledged receipt of P 800,000.00 in consideration of the Deed of Absolute Sale of four lots in Agus, Maribago, Palu-Lapu City. These amounts when added, produce the sum of P2,450,000.00[7]. This sum is short of P 130,000.00[8] from the P2,580,000.00 which is alleged to be the consideration of the sale. The accused-appellant believes that the computation coincides with the private complainant's testimony that the P 300,000.00 given to him (accused-appellant) is part of the consideration of P 2,580,000.00.

The accused-appellant also points to paragraph 2(e) of the Compromise Agreement which states that defendants bind themselves to pay, refund and/or return to plaintiff the amount of P 3,250,000.00 representing the principal and the interest of the lot in Sta. Rosa, four lots in Agus, Lapu-Lapu City as full and final compensation to the latter of the lots returned or turned over to him by the defendants. According to the accused-appellant, this wiped out the cause of action against him and against the Spouses Caparas because what was returned to the private complainant Robert Dino included the P 300,000.00.

Last, the accused-appellant appeals to the human side and equity (of the law) because he is already 75 years old, sickly and could no longer walk.

The Solicitor General counters in his Brief that:

I.

APPELLANT'S GUILT FOR ESTAFA UNDER PARAGRAPH 1(b), ARTICLE 315 OF THE REVISED PENAL CODE HAD BEEN DULY PROVEN BEYOND REASONABLE DOUBT; HENCE, HIS CONVICTION IS IN ORDER.

II.

THE FINDINGS OF THE TRIAL COURT ARE SUPPORTED BY EVIDENCE; HENCE, THEY ARE ENTITLED TO RESPECT.

It is the Solicitor General's contention that all the elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code are present in this case. There is no dispute that appellant received the amount of P 300,000.00 as advanced payment of capital gains tax, documentary tax, and other related expenses for the transfer of ownership of the seven lots to private complainant. This fact was admitted by the accused-appellant during his cross-examination. In particular, he admitted that he signed the Memorandum Receipt dated December 3, 1992 and that he failed to comply with his undertaking thereon.

The Solicitor General describes as puerile, the accused-appellant's insistence that he neither converted nor misappropriated the money to his own benefit because he entrusted it to a certain Riel Inoc. The essence of the kind of estafa that accused-appellant is charged is the appropriation or conversion of the money or property received to the prejudice of the one to whom a return should be made.

According to the Solicitor General, the RTC aptly rejected the accused-appellant's claim that his criminal liability has been extinguished when the private complainant and the Spouses Caparas entered into a compromise agreement. The felony has already been consummated. Besides, there is jurisprudence[9] that says that criminal liability for estafa is not affected by compromise or novation of the contract for it is a public offense xxx.

The Solicitor General thus intimates that since the issues in this case ultimately revolve on the credibility of the witness, the assessment by the trial court thereof will not be disturbed by the appellate court unless there are significant facts and circumstances that had been disregarded.

Our Ruling

We reverse the decision of the RTC convicting the accused-appellant of estafa. This reversal is anchored not upon the reason that accused-appellant gave but rather due to the variance in the allegation in the Information and proof.

In discussing Our findings, We need not overemphasize the concept of appeal in criminal cases, that it throws the whole case wide open for review by an appellate court[10], on both questions of law and of fact whether or not

raised by the parties[11]. Thus, it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned[12].

Acting upon this duty, We examine first the information and determine the ultimate facts alleged therein, to wit:

1. Or about the 3[rd] day of December, 1992 in the City of Mandaue, the accused Concordio Toring was entrusted with Metrobank check no. 12211756 in the amount of P 200,000.00 belonging to Robert J. Dino.
2. The accused was to pay the amount to the BIR as Capital Gains Tax, documentary stamps and other related expenses in connection with the transfer of ownership to private offended party's (Robert J. Dino) properties.
3. The accused far from complying with his obligation, failed and refused to return the amount despite repeated demands.
4. The accused with grave abuse of trust and confidence and with fraudulent intent, misappropriated and converted the amount to his own personal use thus causing damage to the offended party.

During the trial, the private offended party, Robert J. Dino, identified the Memorandum Receipt dated December 3, 1992 to show that the accused-appellant received the sum of P 300,000.00, under MMBTC Check No. 142117516 in the amount of P 200,000.00, MMBTC No. 142117543 in the amount of P 100,000.00 as advances for payment of the BIR, Capital Gain Tax, Documentary Stamp, Taxes and other related expense[13]. However, while the Memorandum Receipt[14] states MBTC #142117516 for P 200,000.00 as one of the two checks received by the accused-appellant, the Information cites a different Metrobank check no. that is, Metrobank check no. 12211756. Added to that, while the Memorandum Receipt also refers to MBTC # 142117543 for P 100,000.00, this check is not expressly found in the Information, hence, irrelevant and immaterial to prove the misappropriated amount of P200,000.00 only. In other words, no evidence at all has been adduced to prove the allegation in the Information that the accused-appellant herein received Metrobank check no. 12211756, the amount (P 200,000.00) of which he allegedly misappropriated.

Section 4 and Section 5 of Rule 120 of the Revised Rules of Criminal Procedure[15] are applicable provisions on variance in the allegation and proof.

Sec. 4 Judgment in case of variance between the allegation and proof - When there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

Sec. 5 When an offense includes or is included in another - An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitutes or form a part of those constituting the latter.

In our view, the trial court committed an error in convicting accused-appellant of the crime of estafa. The variance between the offense charged and the offense proved, is such that the accused-appellant cannot be convicted of the offense proved, i.e., estafa through misappropriation of P300,000.00 (amount representing the two MBTC checks) because it is not included in the offense charged, i.e. estafa through misappropriation of P 200,000 (amount representing only one MBTC check with a different check number).

It is crystal clear that in the instant case, the variance between the documentary evidence (Memorandum Receipt) presented by the prosecution and the material allegation in the information cannot prove the crime of estafa. The check number of the amount allegedly misappropriated as stated in the information is not the same check no.

referred to in the Memorandum Receipt. Moreover, while the total amount of damage is around P200,000.00 as indicated in the information, the evidence adduced in the Memorandum Receipt mentions of a bigger amount of P300,000.00. Damage as an element of estafa may consist in 1) the offended party being deprived of his money or property as a result of the defraudation; 2) disturbance in property right; or 3) temporary prejudice[16]. Given these factual circumstances, the accused-appellant cannot be convicted with estafa. The variance in the proof of the damage is such that it cannot be included in the offense charged in the information.

Indeed, it is a hornbook doctrine that an accused cannot be convicted of an offense not charged or included in the information because the Constitution guarantees that: In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. It matters not how conclusive and convincing the evidence of guilt may be, an accused person cannot be convicted of any offense unless it is charged in the complaint or the information on which he is tried, or necessarily included therein. He has a constitutional right to be informed as to the nature of the offense with which he is charged before he is put on trial[17]. In other words, variance between the allegation and proof cannot justify conviction for either offense charged or offense proved unless either is included in the other[18].

WHEREFORE, the June 15, 2005 Decision[19] of the Regional Trial Court, Branch 55, Mandaue City in Criminal Case No. DU-6013 is REVERSED and SET ASIDE. The accused-appellant Concordio Toring is ACQUITTED of the charge of Estafa for lack of evidence. It is hereby ORDERED that the cash bail bond under O.R. No. 8711467M shall be released to the accused-appellant.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

[*] Vice Justice Delos Santos who is on wellness leave, per Office Order No. 13-14-GTI dated June 17, 2014.

[1] Rollo, pp. 29- 33.

[2] Records, p. 1

[3] Records, p. 34.

[4] As culled by the court a quo in the decision.

[5] See appellants brief which was culled from the assailed decision of the RTC

[6] Records, p. 152.

[7] The correct sum is P2, 150,000.00.

[8] Based on the sum of P 2,150,000.00, it is P 430,000.00 short of P 2,580,000.00.

[9] People v. Ladiva, G.R. No. 131920, November 12, 2000.

[10] People v. Sandiganbayan, G.R. No. 164577, July 5, 2010, 623 SCRA 147 cited by Justice Magdangal M. De Leon in Appellate Remedies, 2013, p. 228.

[11] Tan v. People, G.R. No. 148194, April 12, 2002, supra.

[12] San Juan v. People, G.R. No. 177191, May 30, 2011, supra.

[13] TSN, October 19, 2001, p. 11-12.

[14] Exhibit “A”, Records, p. 71.

[15] A.M. No. 00-5-03-SC effective December 1, 2000.

[16] Tan v. People, G.R. No. 153460, January 29, 2007.

[17] Matilde, Jr. v. Jabson, 68 SCRA 456, 461 citing US v. Campo, 23 Phil 396; People v. Ortega, G.R. No. 116736, July 24, 1997, 85 SCAD 1; cited in Herrera, Remedial Law IV, 2007, 882-883.

[18] Esguerra v. People, 108 Phil 1078.

[19] Rollo, pp. 29-33.

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